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Federal Communications Commission

DA 00-1694

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. <u>99-362</u> ,
Table of Allotments,	)	RM-9730
FM Broadcast Stations.	)	
(Canton and Morristown, New York)	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: July 19, 2000**

**Released: July 28, 2000**

By the Chief, Allocations Branch:

1. At the joint request of Radio Power, Inc. (formerly Cartier Communications, Inc.), licensee of Station WVLF (formerly WVNC), Channel 244A, Canton, New York<sup>1</sup>, and Waters Communications, Inc., licensee of Station WNCQ-FM, Channel 275A, Morristown, New York ("petitioners" or "Radio Power" or "Waters"), the Commission has before it the Notice of Proposed Rule Making, 14 FCC Rcd 16073 (1999). The Notice proposed the substitution of Channel 275C3 for Channel 244A at Canton, the modification of Station WVLF's license accordingly, and the substitution of Channel 244C3 for Channel 275A at Morristown, and the modification of Station WNCQ-FM's license accordingly. Comments and reply comments were filed by the petitioners reiterating their intention to apply for the proposed channel allotments. No other comments were received.

2. Radio Power and Waters seek to upgrade their station's facilities from their present Class A to Class C3 by swapping Channel 275C3 for Channel 244A at Canton and Channel 244C3 for Channel 275A at Morristown. They advanced their proposal as an incompatible channel swap pursuant to Section 1.420(g)(3) of the Commission's Rules and, as such, neither allotment would be available for application by any other party.<sup>2</sup> However, because Channel 244C3 could be allotted to Canton for use by Station WVLF without requiring a change of channel for Station WNCQ-FM at Morristown, the

<sup>1</sup> On September 28, 1999, the Commission approved the assignment of Station WVNC's license from Cartier Communications to Radio Power, Inc., and on October 4, 1999, the call letters of the station were changed to WVLF. Timothy D. Martz is the sole shareholder of both Cartier Communications and Radio Power.

<sup>2</sup> In adopting the rule which allows upgrades on co- and adjacent channels without allowing competing expressions of interest, or incompatible channel swaps, the Commission stated that it would consider analogous proposals, involving channel substitutions at other communities which would be necessary to create the mutually exclusive relationship required to comply with Section 1.420(g)(3) of the Rules. However, in order for a non-adjacent channel upgrade to qualify as an incompatible channel swap, the Commission said that the proposed channel swap between communities must be mutually exclusive, require the licensee in one of the communities to relinquish its channel to the licensee in the other community, and the allotments are the only available channels of that class available to each community. See, Modification of FM Broadcast Station Licenses to Higher Class Co-channel and Adjacent Channels, 60 RR 2d 114 at 120 (1980).

Notice requested comments on whether competing expressions of interest in use of the channels should be considered or if the proposal qualified as an incompatible channel swap.

3. In response, petitioners urge that their proposal be considered as an incompatible channel swap. They agree that Channel 244C3 can be allotted to Canton without any change at Morristown but argue that their proposal should still be considered as an incompatible channel swap because the only Class C3 channel which can be allotted to Morristown is Channel 244 and only if Channel 275 is substituted for Channel 244 at Canton. However, should the Commission decide that this is not an incompatible channel swap, petitioners request that Channel 244C3 be substituted for Channel 244A at Canton and the license of Station WVLF modified accordingly. In reply comments, petitioners state that the Commission does not need to rule on whether the proposed channel substitutions qualify as an incompatible channel swap or as non-adjacent channel upgrades since no other expression of interest in use of the channels was received. Therefore, they state the Commission should grant the proposed channel substitutions.

4. We believe the public interest would be served by substituting Channel 275C3 for Channel 244A at Canton and substituting Channel 244C3 for Channel 275A at Morristown since it could provide each community with local wide coverage area FM channels. The issue of whether the proposal represents an incompatible channel swap is moot in light of the fact that no competing expressions of interest were received. Therefore, in accordance with Section 1.420(g)(1) of the Commission's Rules, we will also modify the licenses of Stations WVLF and WNCQ-FM to specify operation on Channels 275C3 and 244C3, respectively. Channel 275C3 can be allotted to Canton in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 12 kilometers (7.4 miles) north to accommodate Radio Power's requested site. Channel 275C3 at Canton is short-spaced to Channel 276A at Valleyfield, Quebec, Canada. Channel 244C3 can be allotted to Morristown, with respect to domestic allotments, with a site restriction of 12 kilometers east to accommodate Waters desired transmitter site.<sup>3</sup> This allotment is short-spaced to Channel 243A, Buckingham, Quebec, and Channel 244C1, Pembroke, Ontario, Canada. Canadian concurrence in these allotments, as specially negotiated short-spaced allotments, has been requested since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border, but has not yet been received. However, rather than delay any further the opportunity of the licensees of Stations WVLF and WNCQ-FM to file applications specifying operation on the higher powered channels at Canton and Morristown, respectively, we will allot Channel 275C3 to Canton and Channel 244C3 to Morristown. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without the right to hearing, if found by the Commission to be necessary in order to conform to the Canada-USA FM Broadcast Agreement or if specifically objected to by Industry Canada."

<sup>3</sup> The coordinates for Channel 275C3 at Canton are 44-41-51 North Latitude; 75-07-35 West Longitude. The coordinates for Channel 244C3 at Morristown are 44-36-00 NL; 75-30-00 WL.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 11, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:<sup>4</sup>

<u>City</u>	<u>Channel No.</u>
Canton, New York	268C2, 275C3
Morristown, New York	244C3

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Radio Power, Inc., for Station WVLF, Canton, New York, IS MODIFIED to specify operation on Channel 275C3, in lieu of Channel 244A, and the license of Waters Communications, Inc., for Station WNCQ-FM, Morristown, New York, IS MODIFIED to specify operation on Channel 244C3, in lieu of Channel 275A, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Radio Power, Inc. and Waters Communications, Inc., licensee of Station WVLF and Station WNCQ-FM, respectively, are required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

<sup>4</sup> Channel 268C2 was allotted to Canton pursuant to the Report and Order in MM Docket No. 99-293, DA 00-1693, released July 28, 2000.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau**